

Manju Devi Jaiswal @ Manju Devi and ors. Vs. the State of Bihar

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SooperKanoon Citation : sooperkanoon.com/516291

Court : Jharkhand

Decided On : Feb-26-2007

Reported in : 2007(2)BLJR1836

Judge : Dilip Kumar Sinha, J.

Acts : Indian Penal Code (IPC) - Sections 34, 120B, 304B and 498A

Appeal No. : Cr. Appeal No. 246 of 1999

Appellant : Manju Devi Jaiswal @ Manju Devi and ors.

Respondent : The State of Bihar

Advocate for Def. : A.P.P.

Advocate for Pet/Ap. : T.R. Bajaj, Adv.

Disposition : Appeal allowed

Judgement :

Dilip Kumar Sinha, J.

1. The present Cr. Appeal is directed against the judgment of conviction of the appellants under Section 304B read with Section 120B I.P.C. and order of sentence passed against them whereby each of them have been directed to undergo rigorous imprisonment for a term of 10 years by the 3rd Addl. Sessions

Judge, Dhanbad but without separate sentence under Section 120B I.P.C. in Sessions Trial No. 97/1993.

2. The prosecution story lies in a narrow compass, based upon the statement of the informant P.W. 4 Ranjit Jaiswal presented before the Kenduadih Police, Dhanbad giving rise to Kenduadih P.S. Case No. 198/1992. The informant narrated in respect of a cognizable offence that his sister Geeta Jaiswal was burnt to death by her husband Dharmendra Jaiswal, father-in-law Ramchandra Jaiswal, elder brothers of her husband Lavkush Jaiswal, Nand Kishore Jaiswal, Kali Charan Jaiswal, Pancham Jaiswal and the wife of Pancham Jaiswal. The occurrence took place on 27.10.92 at about 11 p.m. and his sister Geeta Jaiswal succumbed to her injuries at about 10.40 a.m. on the day of reporting (28.10.92). Disclosing the genesis, the informant narrated that he had presented Rs. 35,000/- in cash, chain, two rings, wrist watch, ear rings, wrist let on the eve of her marriage but the accused persons were insisting him and putting pressure to deliver a colour T.V. and a scooter to which the informant had expressed inability to meet out their demands. In the night, prior to the alleged occurrence, when the informant had visited the matrimonial home of Geeta (since deceased) at Kenduadih, he found her in-laws abusing her and she was weeping in a corner of the room. However, on extending consolation and solace to her the informant returned to Dhanbad to call on his elder sister. Having been received information at about 2 a.m. in the said night through Pancham Jaiswal and Nand Kishore Jaiswal that Geeta had sustained burn injury in her matrimonial home, the informant with his elder brother-in-law P.W.3 Suresh Chandra Jaiswal went to the Hospital and found his sister in a state of completely burnt. The written report (Ext. 1) speaks alleging someone (Probably wife of Pancham Jaiswal) that she had threatened that Geeta would no longer be allowed to remain alive as because her marriage with Dharmendra Jaiswal deprived her sister to marry Dharmendra and such anguish of the accused was earlier communicated to the informant. It was further alleged that prior to her death Geeta was tortured and assaulted by her husband, his father and brothers of the husband and thereafter she was done to death pursuant to meeting of their minds.

3. The police after investigation submitted charge-sheet against 7 accused persons and they were put on trial by the 3rd Additional Sessions Judge, Dhandbad for the charge under Section 304B read with Section 120B I.P.C. However except the appellants herein, other three accused were acquitted.

4. The prosecution produced and examined altogether 10 witnesses and proved several documents as exhibits.

5. The specific defence of the appellants before the trial court was that Geeta Devi died as a result of accidental fire which took place in the night intervening 27/28.10.92 when Geeta Devi had been to the kitchen for warming milk to feed her 5/6 months old daughter. At that time she was wearing nylon sari and her sari engulfed when she lit the gas oven. She rushed towards her husband sustaining such fire who was in the adjacent bedroom and the appellant Dharmendra Jaiswal (husband) attempted sincerely to put out the fire and in his such attempt he also sustained burnt injuries in his hands, face and other parts of his body. He was also removed to Hospital where he was treated by the Doctor (D.W.5). In support of that the learned Counsel for the appellants submitted that the fact can be proved by the statement of the Investigating Officer who found scattered pieces of burnt sari of Geeta Devi from the kitchen to her bedroom and he did not find smell of K. Oil either in the kitchen or the smell emitting out of her body while her inquest report was prepared. Learned Counsel further submitted that the Doctor (P.W.8) who held postmortem examination on the body of Geeta Devi also did not find smell of K. Oil so the prosecution case is demolished that she was burnt to death, on the other hand the defence of the appellants was established that she died due to burn injuries on account of accidental fire. The intention of the accused persons including the appellants was quite clear from their conduct that Geeta Devi was immediately removed to Central Hospital by the appellants and other accused persons for providing quick medical aid and that there was never any demand of dowry even in the near proximity of the unnatural death of Geeta Devi. It was accidental fire on the sari and body of Geeta as a result of which she succumbed and all attempts was made by the husband-appellant Dharmendra Jaiswal even at the risk of his live to put out the fire from the body of Geeta.

6. The prosecution in support of its case examined P.W. 1 Panna Lal Jaiswal (brother-in-law of the deceased) P.W.2 Indrajit Jaiswal (brother of the deceased,) P.W. 3 Suresh Chandra Jaiswal (brother-in-law of the deceased) P.W. 4 Ranjit Jaiswal (brother as well as informant of the case) P.W. 5 was tendered on behalf of the prosecution P.W. 6 Sushil Kumar Singh as well as P.W. 7 Tarak Nath Jaiswal were the witnesses of the inquest report, formal in nature. P.W. 8 Dr. Sailendra Kumar held postmortem examination on the body of Geeta Devi. P.W. 9 proved the formal F.I.R. and P.W. 10 K.P. Yadav was the Investigating Officer.

7. On the other hand, as many as 6 witnesses were produced and examined on behalf of the defence viz. D.W. 1 Niranjan Srivastava, D.W. 2 Rani Jaiswal D.W. 3 Gaya Prasad Jaiswal, D.W. 4 Binod Kumar Agarwal, D.W. 5 Dr. Vinay Kumar Singh who had examined the injuries of the husband appellant Dharmendra Jaiswal on the requisition of Kenduadih police and D.W. 6 Sunil Kumar Singh.

8. Besides, the prosecution proved the written report of the informant ext. 1, carbon copy of inquest report- ext. 2, the signature of the witness Tarak Nath Jaiswal on the carbon copy of inquest report- ext. 2/1, postmortem report ext. 3, the formal F.I.R. ext. 4 and the inquest report ext. 5.

9. Learned Counsel advancing his argument submitted that admittedly there is no eye witness of the alleged occurrence and even there is no circumstantial evidence against the appellants to connect them with the unnatural death of Geeta Devi who died on account of accidental fire in her sari. Even the prosecution failed to prove that any demand of dowry was made in the near proximity of the death of Geeta Devi so as to attract the offence under Section 304B I.P.C.

10. The learned Counsel further submitted that the prosecution miserably failed to prove the circumstances under which Geeta Devi sustained burn injuries and she died in course of treatment. On the other hand, the defence has projected a definite case that it was accidental fire which engulfed Geeta Devi while she had been to the kitchen to warm milk to feed her 5/6 months old baby and the trial court lost sight of the defence of the appellants which was more probable and convincing than the prosecution case.

11. Learned Counsel pointed out that the trial court in its judgment was silent about the nature of burn injuries found on the person of the appellant Dharmendra Jaiswal who attempted to put out the fire and save the life of his wife Geeta Devi and in course of such attempt he sustained burn injuries in his hands, on face and other parts of his body and had there been intention of the appellants to commit murder by setting Geeta Devi on fire, no attempt could have been made by the husband-appellant Dharmendra Jaiswal. The evidence of D.W. 5 i.e. the Doctor who had examined the injuries of the husband-appellant Dharmendra Jaiswal on the requisition of the police was also overlooked and hence the judgment of the trial court suffers from serious lacuna.

12. Finally, it has been submitted that the trial court relied mainly upon the interested witnesses without testing their veracity and truthfulness and convicted the appellants against substantial sentence and the rule of caution was not applied by the trial court specially when independent witnesses were produced and examined on behalf of the defence.

13. Reliance has been placed upon the decision reported in 1995 Supreme Court Cases (Cri.) 934. The Apex Court in the State of Rajasthan v. Pritvi Raj held,.It is true, as contended by the learned Counsel, that the manner of appreciation of the evidence in respect of the dying declaration is not altogether sound. But the High Court has rightly held that the immediate conduct of the accused and his parents in rushing the deceased to the hospital immediately by arranging a jeep is quite consistent with their being innocent However, we find that the overall reasoning of the High Court in giving the benefit of doubt to the accused cannot be said to be wholly unsound and does not stand judicial scrutiny.

14. Upon careful perusal of the evidence adduced on behalf of the prosecution and the judgment delivered by the trial court it is evident that P.W. 1, P.W. 2, P.W. 3 and P.W. 4 are consistent that Geeta was married to the appellant Dharmendra Jaiswal in the year 1990 and soon after the marriage she went to her matrimonial home Kenduadih and that she was living with her husband-appellant Dharmendra Jaiswal which has not been controverted by the defence.

15. This fact has also been admitted by the parties that Geeta Devi died of sustaining burn injuries but the manner in which she sustained fire has been controverted by the prosecution as well as the defence. The specific case of the prosecution was that she was burnt to death whereas the defence represented that while she had been to warm milk in the kitchen in the night intervening 27/28.10.92 wearing nylon sari the flame of the gas stove engulfed her sari and she started running and came to the adjacent bedroom where attempt was made by her husband-appellant Dharmendra Jaiswal to put out the flames and in his such attempt he sustained burn injuries.

16. P.W. 1 to 4 are consistent that on the eve of marriage lots of dowry including Rs. 35,000/- in cash, jewellerys, cloths and utensils were given as dowry but the relevant fact is that Geeta Devi died only after 2 1/2 years of her marriage, within the limit of 7 years.

17. The statement of P.W. 4 Ranjit Jaiswal (informant) is relevant on the allegation of demand of dowry that after marriage of Geeta Devi when he went to her matrimonial home at Kenduadih, she apprised that the appellants and other accused persons had been demanding a colour T.V. as well as Scooter and in this connection she was subjected to torture. He further deposed that on 27.10.92 when he along with P.W. 3 Suresh Chandra Jaiswal visited the matrimonial home of Geeta Devi on the eve of "Bhaiyaduj" at about 8 p.m. he found her weeping and also witnessed the appellant Dharmendra Jaiswal (husband) and the father-in-law chastising her. After extending solace and consoling Geeta he went to the matrimonial home of his another sister at Manitarn with his brother-in-law P.W. 3 and stayed in the night. At about 2 a.m. in the same night he was informed and communicated by Pancham Jaiswal and Nand Kishore Jaiswal that Geeta Devi had sustained burn injuries and she was removed to Hospital for her treatment. Pursuant to such information he along with P.W. 3 went to Central Hospital, Dhanbad and found Geeta in a state of complete burnt and she was demanding water but he could not interact with her.

18. Referring to a circumstance P.W. 4 deposed that during her lifetime when Geeta visited her parental home she apprised the wife of the witness that the

appellant Manju Devi had been chastising her that only because of her marriage with Dharmendra Jaiswal Manju's sister was deprived to marry Dharmendra and for such reason she would not allow her to live peacefully. In the cross-examination he admitted that there was no demand of scooter or colour T.V. by the appellants on the eve of marriage of Geeta Devi and that he could not get opportunity ask Geeta Devi in the Hospital as to cause and circumstances of her burn injuries. It is Important as well as relevant to mention that this witness deposed in the cross-examination that Geeta was living with appellant-husband Dharmendra on the upper floor of the matrimonial house and there used to live none on the said floor except them.

19. The statements of P.W. 1, P.W. 2, P.W. 3 & P.W. 4 indicate that the appellants and other accused persons had been demanding dowry in the kind of colour T.V. as well as scooter and in this connection appellants were putting pressure upon Geeta Devi to fetch such articles from her matrimonial home. It is further evident that in the near proximity of unnatural death of Geeta Devi i.e. a day prior to the death of Geeta Devi when P.W. 4 Ranjit Jaiswal visited the matrimonial home of Geeta Devi he found her weeping and that she was being chastised by the appellants except Manju Devi.

20. P.W. 1 Indrajit Jaiswal was the brother of the victim who has also corroborated the allegations against the appellants. Admittedly P.W. 1 and P.W. 3 were the brother-in-laws (sister's husband) of Geeta and they have also corroborated on the factum of demand of dowry by the appellants and extending torture to Geeta in this regard.

21. The statement of P.W. 3 Suresh Chandra Jaiswal before the trial court is relevant in the sense that he had accompanied the informant P.W. 4 to the matrimonial home of Geeta Devi in the evening of 27.10.92 and he found her weeping. On query Geeta explained that she was being pressurized by the appellants for fetching money, colour T.V. as well as scooter from her matrimonial home though such demand has not been corroborated by the informant P.W. 4 in his evidence in relation to his last visit to matrimonial house of Geeta at about 8 p.m. on 27.10.92. However, the factum of torture to Geeta on that night has been

admitted by both the witnesses.

22. The next point for consideration is that when both the witnesses P.W. 3 & P.W. 4 pursuant to the information received that Geeta Devi had sustained burn injuries and that she was removed to the Central Hospital, Dhanbad for her treatment visited the Hospital, she was alive at that time demanding water. Though the witness attempted to know the cause of her burn injuries as well as circumstances in which she sustained fire but she could not explain. It is relevant to mention that no attempt was made by the appellants or any other member of their family to inform the police or the Doctor attending Geeta Devi in the Central Hospital, Dhanbad to record her statement as because on account of 100% burn injuries, there was little chance for her survival. It is only after the arrival of P.W. 4 Ranjit Jaiswal and subsequent to her death a written report was presented before the Kenduadih police.

23. Geeta Devi died on 28.10.92 and her postmortem was conducted on the same day on 28.10.92 at about 4 P.M. by P.W. 8 Dr. Sailendra Kumar at Paltliputra Medical, College Hospital, Dhanbad. The witness found Dermoepidermal antimortem burn all over her body except head, left heap and both soles. Singeing of scalp hair were found on the side and in the front. Perineal regions were also spared.

On dissection the witness found:

Both chambers of heart were full of blood. Blood was darkfluid. Stomach was containing about one ounce of darkfluid. Bladder was empty. Uterus was normal, none pregnant. All other viscera were found congested.

Time elapsed since death between 6 to 12 hours.

24. In the opinion of the witness (Doctor) the cause of death was due to shock as a result of aforementioned extensive burn injuries. It was specifically mentioned in the postmortem report (Ext. 3) that there was no smell of K. Oil. In the cross-examination the witness deposed, 'There was burn injury over the face also the burn injury may be due to accident'.

25. The objective finding of the Investigating Officer P.W. 10 Shri K.P. Yadav is important and very much relevant in the sense that on 28.10.92 while he was posted as Officer-in-Charge at Kenduadih Police Station, a written report was presented by Ranjit Jaiswal (P.W. 4) and after lodging an F.I.R. he proceeded to the Central Hospital, Dhanbad and examined the dead body of Geeta Devi. After preparation of the inquest report he sent the dead body for postmortem. On the same day he visited the place of occurrence which was the house of the appellant Dharmendra Jaiswal situated in Kendua Bazar. It was three stoned pucca building and the western room on the second floor was said to be the place of occurrence. He found the bedroom of the appellant Dharmendra Jaiswal attached with a kitchen and there was common door for both the rooms. He found gas oven, gas cylinder, utensils, kerosene stove and kerosene oil in the container in the kitchen. He witnessed a double bed 'palang' with the portable T.V. on the table. The Investigating Officer found 12 rooms in all in the three storied building consisting two rooms each to all the six brothers including the husband of the deceased. Each unit was consisting of a bed room and attached kitchen. In course of investigation he found the pieces of burnt red sari scattered from kitchen to the bed room. He further found K. Oil in container in as also a kerosene stove in good condition in kitchen. The witness deposed in the cross examination that he found a mat on the floor of the kitchen partly burnt. He did neither find the gas oven, container of K. Oil., kerosene stove and gas cylinder scattered, nor kerosene oil spread on the floor. He witnessed that upon one of the burners of the gas oven milk was put in the container whereas another burner was unused. He did not find smell of Kerosene oil either on the floor or in the burnt pieces of cloths of Geeta. He did not find any inflammable substance either in the kitchen or in the bedroom. Though he had seized the burnt pieces of clothes, mat and the plastic container of K. Oil but seizure list was not prepared there. He further deposed that the appellant Dharmendra Jaiswal and all his brothers were living separately having separate kitchen.

26. The sum and substance of the statement of the witness is that the victim Geeta Devi was living with her husband-appellant Dharmendra Jaiswal and the baby child separately at the second floor in the allotted bedroom and kitchen of the joint family in the three storied building. They had independent unit and the I.O. in

his objective finding did not find the evidence that Geeta Devi was burnt by pouring K. Oil on her body or on account of the burst of the Kerosene stove. The Investigating Officer further found the burnt pieces of red sari of Geeta Devi scattered from kitchen to bedroom and the injury on the person of the appellant Dharmendra Jaiswal including in his hand speaks that he tried to put out the flames in the saree of Geeta with the use of his hands. However, it is surprising that other articles of the kitchen as well as of the bedroom including the bed and sofa were found undisturbed and the Dy. S.P in his supervision note speculated that Geeta Devi was brought in the room after burning her at different place which is unsustainable.

27. Upon careful scrutiny of the statements of the Doctor who held postmortem examination as well as the statement of I.O. who visited the place of occurrence in the near proximity of the occurrence on the same day on 28.10.92. it can safely be inferred that K. Oil was not the source of the burning of Geeta Devi for the reasons that neither the Doctor found smell of K. Oil emitting out of the dead body of Geeta Devi within 10 hours of her burning and similarly I.O. also did not find such smell of K. Oil either from the bedroom or from the kitchen. Even the burnt pieces of sari of the victim did not contain the odour of K. Oil. The Trial Court speculated that the possibility of the burning of Geeta Devi by the L.P.G. with the mischief of the appellant and other accused persons cannot be ruled out but I do not find force in that for the reasons, that had there been the leakage of gas in the kitchen, the fire could had engulfed not only the K. Oil, Kerosene stove and other articles kept in the kitchen on litting the gas burner but also on the opening of door it could had affected the bedrooms where cloths and beds were kept extending high risk to the life of the appellants and other accused persons. So the speculation about the mischief of the appellants do not inspire confidence.

28. The appellants have been convicted and sentenced for the charge under Section 304B read with Section 120B I.P.C. and have been substantially punished. The essentials to constitute an offence under Section 304B I.P.C. are sated herein below:

(i) the death of a women must have been caused by burns or bodily injury or otherwise than under normal circumstance.

(ii) such death must have occurred within seven years of her marriage.

(iii) soon before her death the women must have been subjected to cruelty or harassment by her husband or by relative of her husband.

(iv) such cruelty or harassment must be for or in connection with demand for dowry.

(v) such cruelty or harassment is shown to have been meted out to the women soon before her death.

29. In relation to dowry deaths, the circumstances showing the existence of cruelty or harassment to the deceased are not restricted to a particular instance but normally referred to a course of conduct. Such conduct may be spread over a period of time. If the cruelty or harassment or demand for dowry is shown to have persisted, it shall be deemed to be soon before death if any other intervening circumstance showing the non-existence of such treatment is not brought on record, before such alleged treatment and the date of death.

30. I find material on the record that though the appellants were consistent with minor variations that the appellants were demanding dowry and in this connection they were putting pressure upon Geeta Devi. The statement of P.W. 3 and P.W. 4 is relevant as well as important in the sense that within a few hours prior to her death they had visited the matrimonial home of Geeta and found her weeping sitting in a corner. It was auspicious occasion of 'Bhaiyaduj', the day on which the sister pray for the long life of the brothers. On such occasion when the brother P.W. 4 visited his sister's house at about 8 p.m., he did not find the atmosphere of the house of Geeta Devi congenial since she was being chastised by the appellants except Manju Devi and that she was weeping. P.W. 3 Suresh Chandra Jaiswal also supported the allegation against the appellants who had also accompanied P.W. 4 to the matrimonial home of Geeta Devi being her brother-in-law on 27.10.92. The material witnesses such as P.W. 1, P.W. 2, P.W. 3, P.W. 4

being the brothers and brothers-in-law of Geeta Devi are consistent in their statements before the trial court about the demand of dowry made by the appellants.

31. From the materials on the record I find that death of Geeta Devi was caused by burn injury within seven years of her marriage and soon before her death she was subjected to cruelty by the appellants who were none other than the husband, father-in-law, brother-in-law and sister-in-law. Such cruelty or harassment made to Geeta Devi was in connection with demand of a colour T.V. as well as scooter in the near proximity of her death. The complicity of the appellant Manju Devi can be inferred in extending torture and cruelty to Geeta Devi from the statement of witnesses that Geeta Devi during her visit to parental home had narrated that Manju Devi (appellant herein) was willing to marry her sister with Dharmendra Jaiswal but the marriage of Geeta Devi with Dharmendra Jaiswal deprived such opportunity to the sister of Manju Devi and for such reason Manju Devi was nursing grudge against her and had also been putting pressure for dowry.

32. The defence witness were consistent in their statements that Geeta Devi died of sustaining burn in her sari from the flame of the gas burner while she was warming milk for her daughter in the kitchen. D.W. 3 Gaya Prasad Jaiswal, the closed door neighbour of the appellants also corroborated the same fact. The statement of D.W. 4 Binod Kumar Agarwal is important that he was eye witness to the occurrence and when on hearing 'Halla' he with his mother went to the upstairs to the bedroom of Geeta Devi he found Geeta was under fire and the appellant Dharmendra Jaiswal with the help of cloths was trying to put out the fire and in such attempt his hands and hair sustained burn. He further deposed that Geeta was crying that certain mistake was committed by her and was asking to save her life she did not involve any one for the fire sustained by her. This witness was close door neighbour of Dharmendra Jaiswal and he along with his mother and other witnesses such as Niranjana Srivastava, Rani Jaiswal and Gaya Prasad Jaiswal rushed to the place of occurrence almost at the same time when Geeta Devi was under flames. In the cross-examination he deposed that the occurrence took place in the mid night between 12 to 1 O'clock. Similarly, the statement of D.W. 5 Dr. Vinay Kumar Singh produced on behalf of the defence is important in

the sense that on the requisition of Kenduadih Police Station he had examined the injuries of the appellant Dharmendra Jaiswal on 28.10.92. He found the following injuries.

(i) Burn papula of dorsal surface of second, third and forth fingers on middle phalanges.

(ii) Ruptured papula on dorsal surface of little finger.

(iii) Burn Papula of ventral surface (palm) on index finger.

(iv) Burn scalp on dorsal surface of third, 4th and 5th finger (left).

Blackening of forehead 5 x 4 cm. scold.

33. Burn hair on front of head and burn mostache. The injury report was marked 'X' for identification. In the cross-examination this witness admitted that such burn injury could be sustained by a person who attempts to put out the flames from the body of another person. However, he admitted that, 'such injuries may be caused to a person forcibly tries to burn another person by holding with his hands'. The Doctor had given both views that the burn injuries found on the person of the appellant Dharmendra Jaiswal can be caused both way in rescuing another person under flames or by trying to burn by holding the person with hands. Both views lead to conclusion that the appellant Dharmendra Jaiswal was very much present at the time of occurrence but at the same time there is no evidence on the record to show that he lit fire on the body of Geeta Devi by pouring inflammable substance.

34. Neither Doctor P.W. 8 Sailendra Kumar in the postmortem examination nor P.W. 10 Shri K.P. Yadav, Investigating Officer found the use of K. Oil or any other inflammable substance in burning of Geeta Devi. The Investigating Officer did not find the smell or odour of K. Oil anywhere in kitchen or in the bed room including the burn pieces of red sari of Geeta Devi or in the burn pieces of mat lying in the kitchen. Probably the story of mischief by opening the burner or L.P.G. gas cylinder is also overruled because the other articles in the kitchen including the K. Oil container as well as Kerosene stove were found intact. Such objective finding

of the Investigating Officer and the statement of D.W. 4 Binod Kumar Jaiswal indicates that it was accidental fire sustained by Geeta Devi when she tried to burn the burner of gas stove for warming milk for her baby child. The prosecution case failed to prove that it was a culpable homicide amounting to dowry death rather upon meticulous examination of the evidence adduced on behalf of the parties I find that it was accidental fire which engulfed sari of Geeta Devi causing 100% burn injury and that she was immediately taken to the Central Hospital attended by all the members of her family. Her brother (P.W. 4) and brother-in-law (P.W. 3) were immediately informed around 2 a.m. and the matter was not concealed to them. I, therefore, find and hold that the conviction of the appellants under Section 304B I.P.C. is unsustainable and hence it is set aside but keeping in view the allegation of demand of dowry by the appellants and perpetrating torture to Geeta Devi in this connection to fetch a colour T.V. as well as motorcycle I find the witnesses are consistent and the evidence adduced on behalf of the prosecution against the appellants are sufficient to sustain the conviction of the appellants for the offence under Section 498A/34 I.P.C.

35. It is imperative to mention that though no separate charge has been framed against the appellant under Section 498A I.P.C. but their conviction under Section 304B I.P.C. by the trial court and the charge framed under such section against them during trial includes the element of cruelty or harassment by the husband and relatives of the husband in connection with demand of colour T.V. and a scooter. Hence there would not be any illegality or irregularity in convicting the appellants for the offence under Section 498A read with Section 34 I.P.C.

36. In the result, the conviction of the appellants under Section 304B I.P.C. read with Section 120B I.P.C. and the sentence passed thereto against them is set aside. All the four appellants namely, Manju Devi Jaiswal @ Manju Devi, Ram Chandra Jaiswal, Pancham Jaiswal & Dharmendra Jaiswal are convicted under Section 498A read with Section 34 I.P.C. and they are sentenced to undergo rigorous imprisonment for three years each with fine of Rs. 2,000/- each and in default three months further imprisonment. This appeal is allowed in the manner stated above with the direction to the court below to take appropriate steps.

